



**Comments of the National Association of Manufacturers on the Notice Seeking Public Comments on Methods To Prevent the Importation of Goods Mined, Produced, or Manufactured With Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, Into the United States  
Docket No. DHS-2022-0002**

March 10, 2022

Manufacturers appreciate the opportunity to engage with the Department of Homeland Security and the Forced Labor Enforcement Task Force as the U.S. government considers how best to ensure that goods produced with forced labor are not imported into the United States, as required by the Uyghur Forced Labor Prevention Act and Section 307 of the Trade Act of 1930 more broadly.

The National Association of Manufacturers is the largest manufacturing association in the United States, representing companies of all sizes, in every industrial sector and in all 50 states. Manufacturing employs more than 12.5 million women and men across the country, contributes more than \$2.5 trillion to the U.S. economy annually and has the largest economic multiplier of any major sector.<sup>1</sup>

Manufacturers strongly condemn and oppose all forms of forced labor, supported the passage of the Uyghur Forced Labor Prevention Act and are committed to working in partnership with the government to ensure that goods produced with forced labor do not enter the United States.

While the UFLPA focuses on forced labor occurring in the Xinjiang Uyghur Autonomous Region of China, forced labor is a global problem. The Department of Labor's Bureau of International Labor Affairs' most recent report identified 156 goods from 77 countries that are produced with forced labor.<sup>2</sup> These human rights violations vary widely between countries, products, and root causes, and therefore the approaches to address these abuses must take these differences into account.

NAM members that operate globally support and abide by the United Nations Guiding Principles on Business and Human Rights<sup>3</sup>, principles that are also supported by the U.S. government. The UNGPs detail the duties of countries to protect human rights and fundamental freedoms, the responsibility of business to respect human rights and comply with all applicable laws, and the need for rights and obligations to be matched to appropriate and effective remedies when breached.

Manufacturers in the United States are committed to ensuring goods produced with forced labor are not part of their supply chains. With a robust partnership between the U.S government and the private sector that includes new tools, due diligence guidance, clear requirements and increased collaboration, egregious forced labor violations can be effectively targeted and enforced.

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<sup>1</sup> National Association of Manufacturers, "[Facts About Manufacturing](#)," last accessed on March 1, 2022.

<sup>2</sup> Department of Labor, "[2020 List of Goods Produced by Child Labor or Forced Labor](#)," June 23, 2021

<sup>3</sup> United Nations, "[Guiding Principles on Business and Human Rights](#)," June 16, 2011

In order to develop and implement an effective strategy for ensuring goods produced with forced labor in the Xinjiang Uyghur Autonomous Region of China do not enter the United States, it is critical to underscore the importance of collaboration with the private sector to ensure that the U.S. government's review process will be workable and effective in rooting out forced labor in supply chains.

Manufacturers are pleased to provide recommendations for how the government and private sector can work together to best prevent products produced wholly or in part with forced labor from the Xinjiang Uyghur Autonomous Region, and around the world, from entering into the United States. These recommendations focus on:

- Supply chain complexities and traceability challenges and recommended investment
- Importance of clarity regarding due diligence requirements
- Providing benefits for participants in trusted trader programs
- Increasing transparency and partnership regarding allegations, investigations and enforcement
- Collaboration with U.S. allies and partners

## **I. Supply Chain Complexities and Traceability Challenges and Recommended Investment**

As our nation and sector work to implement policies and practices to make our supply chains more reliable, diverse and secure, some necessary materials are currently only available in certain geographic regions or from a select number of suppliers. Throughout manufacturing sectors, there are varying levels of supply chain complexity. Some manufacturing supply chains include many tiers and are extremely complex.

There can be challenges associated with tracing all materials, and the labor associated with those materials, in a complex manufactured good at deeper levels of the supply chain. For example, supply chain transparency often requires cooperation from suppliers several tiers up the supply chain. Additionally, a manufacturer in the United States may have limited leverage to require an upstream supplier, with which the company has no contractual relationship with, to produce business confidential information. Further, some suppliers can be reluctant to cooperate with such due diligence efforts if they believe that doing so would violate local law.

Developments in supply chain traceability technology provide a promising solution for manufacturers in the United States that need to source goods from around the world. Currently, tracing technology is underdeveloped and underutilized. There has been progress in traceability technology for certain supply chains, but these solutions remain limited. Manufacturers recommend additional investment in supply chain traceability technology, including through the Department of Labor's International Affairs Bureau, especially in high-priority sectors for forced labor enforcement. Developing and improving tools that can help achieve full visibility into supply chains will be critical for ensuring goods produced wholly, but especially in part, with forced labor do not enter the United States.

## **II. Importance of Providing Clarity Regarding Due Diligence Requirements**

Manufacturers are seeking clarity regarding U.S. government due diligence requirements that will provide clear evidence of the absence of forced labor in a given product. Manufacturers recommend that the U.S. government consider publishing a notice of proposed rulemaking to seek more specific feedback from relevant stakeholders on the various components of robust

due diligence. The establishment of clear due diligence requirements that the U.S. government will accept as proof that a good was not produced wholly or in part with forced labor will help achieve a level of certainty that is necessary for manufacturers when making supply chain business decisions and will allow CBP to create a more efficient detection and enforcement system.

Manufacturers seek definitive guidelines from the government, as soon as possible, regarding:

- a) Types of clear evidence and documentation that prove that goods are not produced wholly or in part with forced labor
  - b) Information and assistance on best practices in due diligence processes
  - c) Clarity on restricted entities and high-priority products and sectors
  - d) Additional information on “pairing assistance” and “poverty alleviation” programs
- a) Clear Evidence and Documentation to Prove Goods Not Produced Wholly or in Part with Forced Labor: Currently, U.S. Customs and Border Protection does not provide enough clarity regarding specific data requirements that it may require for an importer to demonstrate proof of admissibility during the forced labor Withhold Release Order process. It is critical that the U.S. government provide more clarity regarding the types of evidence that it will accept to demonstrate clear proof that a good was not produced wholly or in part with forced labor.

Manufacturers recommend that the U.S. government publish information about the specific types of documentation that it may seek to verify the absence of forced labor in a product. Such documentation may include certificates of origin, a bill of materials with corresponding material certificates of origin, proof of payment, or shipment documents, among other items. In addition, CBP should make clear the types of information that third-party auditors should seek to provide, and what criteria is necessary for CBP to accept results from an audit.

More clarity around the types of documentation that demonstrate clear evidence that a good was not produced with forced labor will benefit both manufacturers and the government. It will allow manufacturers to sharpen due diligence efforts and be prepared to provide useful information to CBP in case of a detention of a shipment and will also reduce the burden on CBP staff as they will receive the documentation they need to verify the absence of forced labor without spending unnecessary time reviewing extraneous documentation.

- b) Information and Assistance on Best Practices in Due Diligence Processes: Manufacturers are eager to do our part to provide evidence and documentation and implement supply chain best practices to prove the absence of forced labor in various imported products. To help ensure that manufacturers, especially small- and medium-sized manufacturers, are able to do this most effectively, it would be helpful for the U.S. government to provide guidance on best practices in a due diligence program that will help verify that a given supply chain is free from forced labor. These best practices could include the following:
- A supplier code of conduct;
  - Standard contract language prohibiting the use for forced labor;
  - Supplier acknowledgement of social compliance obligations, including during onboarding or at regular intervals during the year or contract;

- Annual supplier solicitation surveys as part of existing origin solicitation programs to obtain negative certification of forced labor;
- Unannounced, on-site, private-sector social compliance audits; and
- Credible and accepted human rights certifications or programs.

Information regarding how to implement these practices and the documentation and various programs that CBP will accept to validate such practices will help manufacturers build even stronger compliance programs. CBP should work with U.S. government interagency partners to increase support and technical assistance for businesses who seek to improve due diligence procedures and incorporate best practices in their compliance plans.

In addition, small- and medium-sized businesses may lack awareness of cost-effective ways to identify and avoid forced labor in their supply chains. Current CBP structures, such as the Centers for Excellence and Expertise, could provide support, especially in sectors that may lack existing initiatives or certifications related to addressing human possible rights abuses.

- c) Clarity on Restricted Entities and High-Priority Products and Sectors: The UFLPA requires the Forced Labor Enforcement Task Force to develop a strategy for supporting the enforcement of Section 307 of the Tariff Act of 1930. This strategy and its many required components will be helpful for manufacturers to refine due diligence programs to do our part in ensuring clean supply chains. One element that will be particularly helpful would be the publishing of various lists that include information regarding where the U.S. government has determined that forced labor exists. These could include lists of entities inside and outside the Xinjiang Uyghur Autonomous Region that directly use forced labor, a list of entities that have been determined to source material from entities in the Xinjiang Uyghur Autonomous Region that use forced labor and a list of products, materials or components mined, produced or manufactured with forced labor. In addition, clarity around new high-priority sectors for which there is expected to be human rights abuses will be helpful so that manufacturers are able to prioritize robust due diligence in these areas.

Lists such as these could be built into existing systems that help facilitate and automate compliance. For example, it may be possible for manufacturers to incorporate any such new lists of denied parties into technology that screens similar lists, such as the Office of Foreign Asset's Control's Specially Designated National's list. These automated systems increase efficiency and reduce errors when compared to manual systems.

To the greatest extent possible, manufacturers recommend the U.S. government be transparent regarding how an entity, product or sector is added to a list. In addition, there should be a process established for an entity, product or sector being removed from a list if forced labor abuses are remediated.

- d) Additional Information on "Pairing Assistance" and "Poverty Alleviation" Programs: The UFLPA requires the U.S. government to provide a comprehensive description and evaluation of "pairing assistance" and "poverty alleviation" programs, or any other

government labor scheme that subjects persecuted groups to forced labor outside of the Xinjiang Uyghur Autonomous Region. Manufacturers seek robust guidance on how best to identify these programs and conduct due diligence to ensure such programs do not exist in their supply chains.

- e) The Need to Provide Clarity as Soon as Possible: Manufacturers recommend that the due diligence guidance outlined above is provided as soon as possible to ensure that industry can prepare to fully comply with the policy changes under the UFLPA take full effect on June 21. This is especially critical for manufacturers with many tiers in their supply chains that may need to make adjustments if their suppliers or sub-suppliers are unable to provide the required transparency and compliance.

The UFLPA requires the State Department to submit a report to Congress by March 23 that contains a strategy to promote initiatives that enhance multilateral coordination, raise awareness of the issue with non-governmental organizations and private sector entities, and a plan to for working with private sector entities seeking to conduct supply chain due diligence to prevent the importation of goods produced wholly or in part with forced labor into the United States, among other requirements.

The full strategy required by the UFLPA is not due until the June 21 effective date, leaving no time to review the strategy ahead of the effective date. Manufacturers encourage the government to issue key parts of guidance as they are ready, as changes to internal compliance systems will take time to implement. In addition, manufacturers encourage CBP to consider providing informed compliance for a limited period of time after the effective date, as was done for the implementation of the United States-Mexico Canada agreement, to help assist with the transition to new requirements.

### **III. Providing Benefits for Participants in Trusted Trader Programs**

Manufacturers in the United States have a history of working with CBP to ensure secure trade through trusted trader programs. For example, the Customs Trade Partnership Against Terrorism (CTPAT) is a voluntary program between businesses and the U.S. government that aims to build a cooperative relationship to strengthen and improve supply chain and border security. Under CTPAT, private sector participants demonstrate evidence of strong internal controls that achieve the highest level of compliance with customs laws and regulations. In turn, these participants are supposed to receive benefits from CBP, such as reduced examination rates, penalty mitigation or reduction and expedited clearance.

Being certified as part of a trusted trader program demonstrates that a company is dedicated to ensuring compliance. Manufacturers recommend that appropriate and workable forced labor compliance criteria be built into the existing CTPAT security profile or annual review for importers, so that certified importers can demonstrate efforts to implement strong forced labor due diligence controls and therefore receive benefits specific to forced labor compliance. This would require CBP to establish a common set of supply chain traceability and verification standards that importers can implement.

CBP should consider providing certain benefits to trusted traders who meet these established, high standards. Forced labor compliance within the trusted trader program will help CBP to better focus on importers who have not demonstrated a high-level compliance and target those actors who may seek to intentionally skirt the law.

#### **IV. Increasing Transparency and Partnership Regarding Allegations, Investigations and Enforcement**

In 2016, the Trade Facilitation and Trade Enforcement Act was signed into law, which expanded CBP's mandate to enforce 19 U.S.C. § 1307, the governing statute that addresses forced labor under U.S. law. However, more than six years since the enactment of TFTEA, CBP has yet to release regulations defining the agency's process, procedures and timelines for investigating, enforcing, communicating and resolving cases it has determined meet the provisions under TFTEA. The absence of regulations coupled with the lack of robust interagency and private sector partnership on the issue has caused uncertainty and disruption and has hindered progress on collaborating to meet forced labor goals.

Currently, CBP's processes for receiving and investigating allegations of forced labor and issuing Withhold Release Orders is opaque. This creates a challenge for U.S. importers to prepare and provide documentation regarding allegations, hinders due diligence efforts and can cause unnecessary supply chain disruptions and uncertainty.

Manufacturers recommend that CBP work to add more transparency to the process for allegations, investigations and detentions, including what evidence CBP uses to move forward with detaining a shipment. Providing importers with the reasoning behind specific detentions will allow them to better partner with the government by focusing due diligence efforts and internal investigations on suspect suppliers.

As potentially another benefit to achieving a trusted trader certification by implementing a strong forced labor compliance system, CBP could also consider working with such stakeholders when an allegation is made, and before issuing a WRO. This could help manufacturers focus due diligence efforts on suspect suppliers, or stop shipments before they are sent if forced labor practices have been verified.

#### **V. Collaboration with U.S. Allies and Partners**

Manufacturers also support initiatives by the U.S. government to work with our allies and partners to streamline and coordinate laws and regulations that aim to combat forced labor around the world. This includes the recently announced initiative at the Office of the United States Trade Representative to develop a focused trade strategy to combat forced labor. Harmonization of due diligence standards and reporting requirements will not only help manufacturers streamline their compliance efforts, but it is also imperative to the goal of eliminating the use of forced labor in Xinjiang and globally.

#### **Conclusion**

Manufacturers stand ready to partner with the U.S. government to ensure that goods produced wholly or in part with forced labor from Xinjiang, or other regions around the world, are not imported into the United States.